IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

WP(C).No. 5681 of 2007(B)

PETITIONER:

ALJO JOSEPH (PROPRIETOR, ORMA MARBLE CHOICE, FEROKE), PUTHENPURA HOUSE, KIDAGANOOR P.O. ANGAMALY.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, COMMERCIAL TAXES, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE ASST.COMMISSIONER, COMMERCIAL TAXES, SPECIAL CIRCLE-II, KOZHIKODE.

3. THE DEPUTY COMMISSIONER (APPEALS), KOZHIKODE.

4. THE DEPUTY TAHSILDAR, REVENUE RECOVERY, ALUVA.

5. THE VILLAGE OFFICER, ANGAMALY.

BY GOVERNMENT PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

WP(C).No.5681 of 2007-B

Dated this the 20th day of February, 2007.

JUDGMENT

This writ petition is filed challenging Ext.P7 which is an interim order passed by the appellate authority on a stay petition seeking to stay Ext.P3 assessment order of sales tax for the year 2001-2002. The return filed by the petitioner was rejected and the turn over was assessed making an addition of Rs.2,06,25,462. The said addition is made based on the estimated suppressed turn over. Twenty percent was added to the said turn over as gross profit and double the amount was taken and the above figure was arrived at. The petitioner submits the said addition is made without any basis and therefore the said order should have been granted on more liberal terms if absolute stay cannot be granted. He also submits, he is ready to furnish security for the entire amount of balance tax due.

2. I heard the learned Government Pleader for the respondents also. If I pronounce on the contentions of the petitioner regarding the merits of the case the petitioner or the respondents will be prejudiced by that in the appeal. So, I propose not to do so. I feel that the appellate authority has granted interim stay on liberal terms. The petitioner has been directed to pay only 40% of the balance tax.

The said direction cannot be said to be arbitrary exercise of power. The prayer of the petitioner to grant stay on furnishing security for the entire amount cannot be allowed, in view of the principles laid down by the Apex Court in Assistant Collector,CE. Chandan Nagar Vs. Dunlop India Ltd. (AIR 1985 SC 330).

In the result, the Writ Petition fails, and it is dismissed.

K.BALAKRISHNAN NAIR,
MS JUDGE.